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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

AWA Docket No. 04-0015

COASTAL BEND ZOOLOGICAL
ASSOCIATION, formerly known as
CORPUS CHRISTI ZOOLOGICAL
ASSOCIATION, a Texas corporation
doing business as CORPUS CHRISTI
ZOO; ROBERT BROCK, an individual;
MICHELLE BROCK, an individual;
BODIE KNAPP, an individual doing
business as WAYNE'S WORLD
SAFARI; and CHARLES KNAPP,
an individual,

Respondents

DECISION AND ORDER

This is an administrative disciplinary proceeding initiated by a complaint filed on March 17, 2004, by the United States Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS"). The complaint essentially alleges that each of the respondents, between October 13 and December 17, 2003, violated the Animal Welfare Act (7 U.S.C. §§2131-2159; "the AWA", or "the Act") and the regulations under the AWA (9 C.F.R. §§ 1.1-3.142; "the regulations"), by mishandling animals, failing to provide animals with requisite veterinary care, and failing to make, keep and maintain requisite records. Corpus Christi Zoological Association ("the Association", or "the Corpus Christi Zoo", or the CC Zoo, or "the zoo"), Robert Brock and Michelle Brock, are also alleged to have failed to obey a consent decision and order, and to have further violated the AWA by engaging in activities for which a license is required while unlicensed.

The violations charged took place subsequent to the issuance of a consent decision and order on October 17, 2003, against Corpus Christi Zoological Association that it "place all of its animals...by donation or sale, with persons who have demonstrated the ability to provide proper care for said animals in accordance with the Act and the Regulations, and as approved by the complainant". The consent decree imposed cease and desist requirements and, effective December 15, 2003, revoked the exhibitor's license Corpus Christi Zoological Association held under the AWA.

The most egregious of the violations alleged by the complaint pertain to the handling of two lions and two tigers that Bodie Knapp moved on December 11 and December 17, 2003, from the premises of the Corpus Christi Zoological Association's zoo. All four of the animals were shown to have died soon after Bodie Knapp, using a dart gun, injected them with immobilizing drugs to facilitate their physical handling for transport from the zoo's premises. Charles Knapp, Bodie's Knapp's father, has also been charged on the basis that he accompanied Bodie Knapp when the lions and tigers were darted, and helped Bodie physically move them to the transport truck. Both of them have been charged with failing to have a veterinarian provide adequate advice and assistance at the time of the incidents; failing to handle transferred animals in a manner that does not cause trauma, stress, harm or unnecessary discomfort; and failing to comply with transportation standards. Bodie Knapp has been further charged with failing to file requisite reports in respect to these and other animals acquired from the Corpus Christi Zoological Association.

Respondents Robert Brock and Michelle Brock have been charged individually and as agents of the Corpus Christi Zoological Association. Their alleged violations

include acting as animal dealers without having required licenses; failing to record requisite information respecting the animals that were transferred; failing to provide needed veterinary care to animals; failing to handle transferred animals in a manner that does not cause trauma, stress, harm or unnecessary discomfort; and failing to establish and maintain adequate programs of veterinary care that gave animal care guidance to personnel.

The Corpus Christi Zoological Association was charged with violating the consent decree, the AWA and the regulations by engaging in activities for which a license is required after its license was revoked; failing to make, keep and maintain requisite records of all animals transported, sold, euthanized, or otherwise disposed of; exhibiting or acting as an animal dealer when no longer licensed; failing to provide needed veterinary care to animals; failing to handle transferred animals in a manner that does not cause trauma, stress, harm or unnecessary discomfort; and failing to establish and maintain adequate programs of veterinary care that gave animal care guidance to personnel.

The Respondents filed answers denying all of the charges asserted against them. Moreover, Robert Brock and Michelle Brock have specifically denied that any of their actions were anything more than those of volunteers assisting Corpus Christi Zoological Association, a non-profit corporation. They further allege that the charges are frivolous and ask that they be awarded attorneys fees. Charles Knapp states that he was merely helping his son and that he has no legal liability under the AWA or the regulations for the way in which the lions and tigers were darted or transported.

I conducted a transcribed oral hearing on April 19-22, 2005 (Transcript 1) and August 30-31, 2005 (Transcript 2), in Corpus Christi, TX. Complainant, APHIS, was represented by Colleen A. Carroll, Attorney, Office of the General Counsel, United States Department of Agriculture, Washington, D.C. Respondent Corpus Christi Zoological Association was unrepresented and did not participate. Respondents Robert Brock and Michelle Brock were represented by Robert Garcia, Attorney, Greenberg Traurig, LLP, Houston, TX. Respondents Bodie Knapp and Charles Knapp were represented by Phillip Westergren, Attorney, Corpus Christi, TX. Briefing was completed on April 3, 2006.

For the reasons that follow, I have found and concluded that the Corpus Christi Zoological Association and Robert and Michelle Brock violated the AWA and the regulations on December 17, 2003, when the Brocks as the Association's agent and on their own behalf, acted as a dealer without a requisite license under the AWA. A cease and desist order should be issued against the Association and the Brocks. The Brocks should also be assessed a civil penalty of \$2,750.00; and disqualified from being issued a license under the AWA for ten years. In light of the fact that the Brocks violated the Act, their attorney should not be awarded fees as he has requested. I have further found and concluded that Bodie Knapp violated the AWA and the regulations on or about December 11 and 17, 2003, and should be made subject to a cease and desist order and assessed a civil penalty of \$5,000.00. The complaint's charges that Charles Knapp violated the AWA and is subject to disciplinary sanctions such as the denial of a license if he should apply in the future, are unsubstantiated and should be dismissed.

Findings of Fact

1. In May of 1996, Robert Brock and Michelle Brock purchased 145.5 acres of land and formed a corporation named Corpus Christi Zoo, Inc. They were the corporation's officers and directors. On August 6, 1996, Robert and Michelle Brock applied for an AWA exhibitor's license stating that they had 2 rabbits and 160 farm animals and used the business name "The Corpus Christi Zoo, Inc." (CX 56, CX 24, CX 88, Tr. 832 and Tr. 835).

2. On August 27, 1996, Corpus Christi Zoological Association was formed as a Texas non-profit corporation and filed its Articles of Incorporation with the Texas Secretary of State. (CX 25). The Brocks were listed as directors on the Articles of Incorporation, but at the organizational meeting of the Board of Directors held on November 1, 1996, five persons other than the Brocks became the directors. (RX 154). The Brocks decided not to serve as directors because their attorney explained to them that they could not serve on the Board and also be paid employees. (Transcript 1 at 928). The Board elected Annie M. Garcia as Chairman, Kay Mrazek as Treasurer and Alice Rodriguez as Secretary. The other two directors were Dr. Antonio Fuentes and Lita Fuentes. The Board resolved to enter into a lease with the Brocks and another with Roland Garcia, Sr., Michelle Brock's father, and to purchase the assets and assume the liabilities of The Corpus Christi, Zoo, Inc. (RX 154). The Corpus Christi Zoological Association assumed the name "The Corpus Christi Zoo" as its trade name and did business in that name. (Transcript 1 at 946; CX 2: Consent Decision at 1).

3. The Brocks failed to make the payments on the 145.5 acres of the land they had purchased for building a zoo. In a letter dated May 6, 1997, Annie M. Garcia, as the Chairman of the Board, responded to a request for information by the Internal

Revenue Service, and stated that Roland Garcia assumed the land payments on January 21, 1997, with the agreement that the zoo would lease the land from him for the value of the note payment plus taxes.(CX 56). However, there is also testimony that the land reverted back to its original owners, Walter and Betty Camp. (Transcript 1 at 835). At any rate, on July 24, 1997, the Camps donated 15 acres of the land to the Corpus Christi Zoological Association with a stipulation that it was to be used as a zoological garden and, if not, it would revert back to the Camps.(RX 139; Transcript 1 at 835). It is found that, at all times material herein, the land on which the zoo facilities actually stood was owned by the Corpus Christi Zoological Association. (Transcript 1 at 831-835).

4. On April 15, 1997, the Board of Directors of the Corpus Christi Zoological Association appointed Robert Brock as General Manager and Michelle Brock as Assistant Manager of the zoo. At this meeting the zoo's gate prices and Robert Brock's procedure for soliciting sponsorships were discussed.CX 63).

5. On June 12, 1997, the zoo's Board of Directors again met. In attendance were Annie Garcia, Lita Fuentes, Maxine Duis, Kay Mrazek, Tony Fuentes, Maria Siller, Michelle Brock and Roland Garcia. Upon motion, Greg Perks, Dr. Graham Hickman and Maxine Duis were approved by the Board as new directors. The Brocks reported to the Board, among other things, that the operation of the zoo was slow but on schedule, and there was a need for more volunteers who would only be paid reimbursement of their expenses. It was further reported that Robert Brock had made arrangements with Steve Dornin who owned tigers, to rent a small area behind the zoo's fenced area as a temporary holding caged area for the tigers until the zoo could find a sponsor for a permanent structure. The responsibility for building cages and the maintenance and

feeding of the tigers would stay with Mr. Dornin who would also provide a \$1,000,000.00 liability insurance policy. Annie Garcia reported that application for the IRS 5013-C (recognition as a non-profit for federal tax purposes) was being processed and was pending. Dr. Hickman reported that he had agreed to chair the African Committee, and he believed the zoo needed professional landscaping and an improvement of its image. Lita Fuentes reported that one of her Dr. friends may be willing to have a fund raiser for the zoo parking area.(CX 102).

6. On November 12, 1997, there was another Board of Directors meeting. Noted as present were Roland Garcia, Sr., Annie Garcia, Cruz Colombo, Michelle Brock, Sue Fordtran, Graham Hickman, Darlene Gregory, Gilda Garcia, Faith Farias, Kay Mrazek and Rusty Beck. A motion by Michelle Brock to amend the minutes of a meeting held the week before passed. The minutes show an extensive discussion of many topics that included the holding of a Zoobilee, identifying persons in the community who wished to donate money or construction materials to the zoo; the making of a one hour video of the zoo maintaining animals; seeking large corporate donors; holding CCZA meetings monthly or weekly; Darlene Gregory marketing calendars to raise funds; Cruz Columbo handling future dealings with Spanish media and Darlene Gregory covering English; the requirement that any future purchases by Darlene Gregory must be authorized by Annie Garcia or Kay Mrazek; Sue Fordtran pursuing the idea of making Zoo T-shirts; a motion by Kay Mrazek to give a 15% commission to anyone who does a grant for the CCZA; and in respect to a lawsuit against the Zoo concerning the housing of the big cats, Michelle Brock announcing that Steve Dornin wants to sell the big cats to

the Zoo for \$800.00---"She said this was a good price considering the regular price of \$2,000.00".(CX 103).

7. Under the terms of an employment contract that began on February 4, 1999, the Board of Directors hired Michelle Brock as Executive Director to perform its management duties at a salary of \$36,000.00 per year. At that time, Annie M. Garcia was still the Chairman of the Board, Kay Mrazek was the Treasurer and Sue Fordtran was the Secretary. (CX 65).

8. At a Board of Directors meeting held in March 2001, attended by David Bern, Sue Fortran, Annie Garcia, Faith Ferias, Michelle Brock and Graham Hickman, it was reported that Robert and Michelle Brock were not renewing their management contract due to Robert having other work and Michelle taking care of her grandmother full time. Michelle told the Board she couldn't do the tours that were booked, but that she and Robert would continue to volunteer their time and money whenever they were able to do so, but they were broke. The minutes further reported that David Bern and Al Bolin would replace the Brocks and a new contract was needed. (RX 146).

9. Chronologically, the managers of the Corpus Christi Zoo were as follows:

(a) Robert Brock worked at the Corpus Christi Zoo in 1997-1999. He ran out of money in 1999, and went back to work as a stockbroker. (Transcript 1 at 941, 946 and 951).

(b) Michelle Brock followed Robert Brock as the zoo's manager in 1999, and ended her management duties in 2000/2001. At a meeting of the Corpus Christi Zoological Association in March, 2001, the minutes show that the Brocks "will not be renewing the management contract due to Robert is working and Michelle is taking care

of her grandmother full time. David Bern and Al Bolin will replace them...." (RX 146; Transcript 1 at 960).

(c) After the Brocks stopped managing the Corpus Christi Zoo, David Bern became the Manager and Al Bolin the Assistant Manager. "Al Bolin lived on site like a night watchman, and he did construction." (Transcript 1 at 959; RX 146). Al Bolin started at the Corpus Christi Zoo in 1998; first started handling inspections in late 2000; and last signed an inspection report on May 22, 2002. (Transcript 1 at 960, 961).

(d) By 2002, management by both David Bern and Al Bolin ended. David Bern left first, and Al Bolin left in 2002, after he had a heart attack. Thereupon, Ron Robinson who had been helping Al Bolin, took over the park and became the manager. Ron Robinson's management of the zoo was pursuant to a written document in the form of a commercial lease. Under the lease, he paid the Association \$50 per month rent for which he was provided use and occupancy of the zoo's premises and housing as the "onsite zookeeper available 24 hours a day at the zoo". The lease noted that: "All expense purchase orders incurred by the Zoological Association must be approved by a Board of Directors quorum. All purchase orders between \$500 and \$1,000 must be approved by the Chairman of the Board of Directors". It was signed on behalf of the Association by Faith Farias, President and Alex Rodriguez, Secretary. The lease was dated June 17, 2002. Copies were sent to Sue Fordtran, Michelle Garcia, Dr. Graham Hickman and Gregory T. Perkes. (RX 145). Ron Robinson had an assistant named James Hubbard or James Hubbell, who moved on-site as the Assistant Manager. Robinson managed the Corpus Christi Zoo through the end of 2002. (Transcript at 964-966; RX 145).

(c) At the end of 2002, Steve Verno and Kathy Hostetler took over management and maintenance of security at the Corpus Christi Zoo and moved on-site. (RX 140; RX 141; RX 147; RX 148). In 2003, Steve Verno became President of the Corpus Christi Zoo, and Kathy Hostetler became its corporate secretary and manager. (RX 140; RX 141; RX 147; RX 148; CX 79 at 2; Transcript 1 at 967). The inspection reports respecting the Corpus Christi Zoo in 2003, show that the responsible person present at each inspection was Steve Verno, Kathy Hostetler, or Sherri Watkins. The APHIS official who conducted the 2003 inspections testified that neither of the Brocks were present at any of the 2003 inspections and did not sign any of the inspection reports. (RX 150; Transcript 1 at 772-773).

10. In 2002, Sonny Kelm, an investigator for APHIS, conducted interviews with Robert Brock, Michelle Brock and Al Bolin and was on the zoo's premises at various times. (CX 81; CX 82; CX 95; Transcript 2 at 737-781). The memoranda Mr. Kelm prepared of these interviews and his testimony respecting his observations, indicate that even though Al Bolin was responsible for the on-site management of the zoo, Robert Brock took an active leadership role in the overall conduct of the zoo. Mr. Brock was the person who obtained legal counsel to defend the zoo from the complaint (AWA Docket No. 02-0016) APHIS had filed against it. When Mr. Kelm observed Robert Brock and Al Bolin together at the zoo, Robert Brock was the one giving the orders. (Transcript 2 at 780). Mr. Kelm also stated that both of the Brocks "did a pretty good job" when they managed the zoo, whereas Bolin was "below standards". (Transcript 2 at 776-777). When Mr. Kelm interviewed Al Bolin on May 9, 2002, respecting inspections at the zoo on March 12, 2002, March 13, 2002 and April 25, 2002, Mr. Bolin attributed most of the

problems at the zoo to a shut off of power by the electric company, on 12-3-01, that caused a power surge that burnt out the refrigerators, freezers and the water purification system. In response, Robert or Michelle Brock brought out jugs of water every day that Al Bolin used to water the animals; and Robert Brock purchased a 7000 watt generator that provided the zoo with power to run the refrigerators, freezers, water well, and lights. (CX 95; Transcript 2 at 776).

11. On October 10, 2003, there was a Zoo Meeting attended by Michelle Brock, Kathy Hostetler, Sherri Green and Steven Verno. (CX 71 at 1). The following notes were made at the meeting:

Court date was the subject of the meeting.

Discussed possibilities.

Voted to take the USDA's offer to surrender the license..

The agreements are that we keep our license until USDA finds homes for the big cats. They have until December 15.

12. On October 13, 2003, Colleen A. Carroll, attorney for APHIS, sent a facsimile transmission, to Roland A. Garcia, attorney, "to memorialize our conversations regarding settlement..." (CX 62; RX 96). In her concluding paragraph, Ms. Carroll stated:

I also write to reconfirm APHIS's agreement to assist your client in the placement of its existing regulated animals by December 15, 2003. In the event that such animals are not able to be placed by December 15, 2003, despite the best efforts of respondent, and with APHIS's assistance, APHIS agrees to move for issuance by December 14, 2003, of an order modifying paragraphs 2 and 3 of the Order (providing for the effective date of revocation and deadline for placement of animals) to provide for an appropriate later effective date and deadline, and to move for additional such orders as necessary.

13. On October 17, 2003, a consent decision and order was issued in resolution of the complaint filed by APHIS that had alleged the Corpus Christi Zoological Association violated the AWA and the regulations on March 12, March 13, April 25, May 7, May 22, and September 24, 2002. (AWA Docket 02-0016; CX 2). The consent decision and order was signed on behalf of the Corpus Christi Zoological Association, a Texas corporation doing business as Corpus Christi Zoo, by Steven Verno its President on October 14, 2003. (CX 2 at 23). It was signed on behalf of APHIS by Colleen A. Carroll, Attorney for Complainant. The Order required that:

1. Respondent, its agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.

2. Respondent's Animal Welfare Act license (number 74-C-0407) is revoked, effective December 15, 2003.

3. By December 15, 2003, respondent shall place all of its animals, as that term is defined in the Act and the Regulations, by donation or sale, with persons who have demonstrated the ability to provide proper care for said animals in accordance with the Act and the Regulations, and as approved by the complainant.

14. Neither Robert Brock nor Michelle Brock signed the consent decision and order. Neither of them was a named party subject to the terms of the consent decision and order. (CX 2).

15. Efforts to place the animals were undertaken by Kathy Hostetler, the zoo's manager, but no one would take its big cats, i.e., its two lions and four tigers. (Transcript 1 at 986 and 998; RX 95). The difficulty in placing the big cats was made known to Ms. Carroll by Mr. Garcia in an e-mail he sent to her on October 16, 2003. (RX 95). Everyone

involved with the zoo made calls trying to find homes for the animals, including Robert Brock. (Transcript 1 at 984).

16. In seeking placements for the big cats, Bodie Knapp was approached in late October, 2003 about taking them, and Robert Brock discussed this possibility with Bodie Knapp. (Transcript 1 at 988-989). The zoo had previously placed three lions and two snow macaques with Mr. Knapp on February 3, 2002. (Transcript 1 at 983). A report of the February 3, 2002 placement had been made by the zoo to APHIS and APHIS did not assert any objections. (Transcript 1 at 750-751, 1042-1044).

17. On November 15, 2003, a Zoo Meeting was held that was attended by Michelle Brock, Sherrie Green and Kathy Hostetler.(CX 72). The following notes were made at the meeting:

Haven't heard from USDA. Still have big cats & all other animals

Discussed what we can do after USDA is gone. Talked about doing birds & reptiles. Discussed moving to Alice.

Talked about placing some of the animals

Told CJ to move the bush babies.

18. On November 18, 2003, Bodie Knapp sent a fax to "Robert & Michelle" responding to an agreement sent him for taking over the zoo and its animals. (RX 86 at 1). It read as follows:

The following is the agreement you sent us:

- \$12,000 Mortgage to Roland Garcia, rated at 0% interest, \$250/mo payment for 36 months, balance due at 36 months.
- Papers would be from Seller (Corpus Christi Zoological Association) to buyer (Titled, Corpus Christi Zoological Association)
- Clean out one building per month/Sunday, except Thanksgiving, 3 buildings, (i.e. cleaned out before Christmas)

- Carousel belongs to Brocks
- Michelle's agreement for Lynx & Skunk
- Meet to do Board Papers & Taxes
- Michelle promote park, maybe have you guys bring animals (Good)

The following are clarifiers I would like to see added.

- Mortgage – I understand that the Corpus Christi Zoological Association (CCZA), is in debt to Roland Garcia for \$12,000. Bodie & Jennifer Knapp (Personally) will agree to accept and pay this debt for the association, in turn the association agrees to turnover deed ownership of the real estate to Bodie & Jennifer Knapp (Personally) the terms of the \$12,000 debt payment to Roland Garcia are as follows: rated at 0% interest, \$250/mo payment for 36 months, balance due at 36 months.
- Papers – I do not understand the papers statement, perhaps it is included in the above.
- Clean Out - Cleaning the inside of the buildings would be beneficial, but I was more concerned with the costs associated with removing the larger amounts of debris. I would prefer to have large dumpsters spotted each week for three weeks, and some plan to remove the larger pieces (roof sections etc.) I would like the same timeline, before Christmas.
- Carousel – I would like to discuss keeping carousel in the park, we have some ideas for it.
- Michelle's Agreement, I have no problem giving Michelle free access to the park and I plan to keep the lynx. However, this is the first I've heard of the Skunk. I do not have the permits to keep Texas Species and I am..... (the fax evidently continued to another page that was not supplied as part of this exhibit)

19. On November 20, 2003, a Zoo Meeting was held that was attended by Robert Brock, Steven Verno, Kathy Hostetler and Arnold Garcia. (CX 73). The following notes were made at the meeting:

The board held a meeting and decided to sign the two mobile homes over to Michelle Brock for back wages owed to her. She is willing to trade out due to the fact the zoo is not open to the public & does not have the money to pay her.

20. On November 25, 2003, Bodie Knapp faxed a signed version of the same proposal that he had sent on November 18, 2003. (RX 86 at 2).

21. On November 28, 2003, the Board of the Corpus Christi Zoo met and agreed to accept Mr. Knapp's offer. At this meeting, the Corpus Christi Zoo Board members resigned and agreed to let Mr. Knapp assume the responsibilities of the Corpus Christi Zoo. Within a day or two of the date that the Corpus Christi Zoo Board accepted Mr. Knapp's offer and resigned, Mr. Knapp gave notice that Kathy Hostetler and Steve Verno were to vacate the premises within two weeks. The time to vacate was later extended and they stayed through the end of December, 2003. (Transcript 1 at 995-996; RX 140 at 2). In purported minutes of a December 15, 2003 Zoo Meeting (RX 87), that Bodie Knapp testified are bogus (Transcript 2 at 612-613), the resignation of the prior board was noted as well as the fact that:

They will no longer be responsible for the property located on the Cr33 CC Zoo.
or its animals

New officers are:

Bodie Knapp, president	11344 hwy Mathis TX 78368
Jennifer Knapp vice president	
Janet Young treasurer	3226 Brownsville rd Pittsburgh PA 15227
Dave Farence	318 sheetz road Halifax pa 17032 ph 717 896 3267
Elenor Noel sectary	heri box 560 sandia TX 78383 ph 361 547 1296

Steven Verno and Kathy Hostetler were given 2 weeks notice to vacate by Bodie and Jennifer Knapp and were asked to move immediately.

22. Ms. Carroll sent Mr. Garcia an e-mail on December 2, 2003 (CX 76 at 1 and 2), which listed "approved persons and facilities" located by APHIS that:

...will accept all but three of the respondent's animals (three of its four tigers) that are required to be placed by donation or sale, by December 15, 2003, pursuant to the consent decision and order issued on October 17, 2003.... The respondent should contact these persons and facilities directly to make arrangements for the animals' transfer, and must make the required records of the disposition of each animal (Form 7020).

23. Mr. Garcia, on December 2, 2003, e-mailed the following reply to Ms. Carroll (CX 76 at 2):

Thanks for the update. I will pass this information to the Corpus Christi Zoo. Pursuant to our previous discussions, I assume that either the exhibitors or APHIS will provide for transportation, or pay for the relocation. The CC Zoo has no funds for the transfers. Thanks.

24. In response to Mr. Garcia's e-mail, Ms. Carroll, sent him the following e-mail on December 2, 2003 (CX 67 at 5):

You're welcome

Although we discussed APHIS's agreement to assist in securing facilities for the placement of existing animals (and APHIS has found homes or potential homes for all of the animals), your assumption that APHIS would also transport or provide transportation for those animals is incorrect. I know of no "previous discussions" in which I participated that could have left you with that assumption. The arrangements for the transfer of the animals in this case are between the Corpus Christi Zoo and the facilities, and do not involve APHIS. In fact, APHIS does not provide or arrange for any animal transportation except in confiscation cases pursuant to section 2.129 of the AWA regulations. Moreover, in those cases, all costs are borne by the dealer or exhibitor from whom the animals were confiscated.

25. On December 6, 2003, Bodie Knapp picked up and transported a vervet from the Corpus Christi Zoo.

26. On December 11, 2003, Bodie Knapp picked up and transported two lions from the Corpus Christi Zoo.

27. On December 13, 2003, Mr. Garcia e-mailed Ms. Carroll as follows (CX 76 at 1 and 2):

As an update please be advised that none of the exhibitors you identified were willing or able to accept the big cats. (The small animals are no problem, and all are gone except the wolf and skunk as I understand it, which are anticipated to be picked up in the next two or three weeks).

Specifically, Mr. Pardon stated that he was interested, but that he needed to speak with a third party (unnamed) and that he would get back to the CC Zoo. He never

did. Ms. Hart said that she is interested but would have to get back to the CC Zoo. She never did. Ms. Swett was not contacted because the lynx and the monkey have already been placed. Mr. Boller was not contacted because the goat and the sheep have been placed. Mr. Moas was not contacted because the skunk has been claimed by a refuge in Rockport (I cannot recall the name). Mr. Cruz was not interested because according to Mr. Cruz, Mr. Curer (sic) told Mr. Cruz that the tiger had been de-clawed (it had not). In other words, Mr. Cruz only wants a de-clawed tiger, which the CC Zoo does not have. Mr. Gilgreth is not able to take the tigers because he does not have a facility for them, and would need to build a facility and he has no funding to build one. Ms. Keahy stated that she could take any of the cats, but needs \$10,000 per cat. Ms. Asvestes stated that she needs about \$5000 to \$10,000 per cat to house the cats. The CC Zoo called and left messages with the Colorado facility, but never heard back.

Two of the lions and one tiger have been picked up. Mr. Napp (sic) stated that he could pick up the remaining animals in the next two to three weeks, depending on the weather and his schedule.

I request that the court extend the order by three weeks to allow for the pick-up of the remaining animals. Please prepare the order and submit it to the court. I do not need to see it before you submit it. If you prefer another course of action, please let me know. Thanks.

28. On December 15, 2003, Ms. Carroll sent Mr. Garcia this e-mail reply (CX 76 at 9):

I am dismayed to learn that your client has placed animals without adhering to the terms of the consent decision – to wit: “with persons who have demonstrated the ability to provide proper care for said animals in accordance with the Act and the Regulations, and as approved by the complainant.” Please immediately provide the identities of those individuals and persons to whom your client has placed the various animals. I look forward to hearing from you soon.

Very truly yours,

29. On December 17, 2003, Bodie Knapp picked up and transported a fox, two sheep, a pony and two tigers. Charles Knapp who is Bodie Knapp’s father was with him on December 11 and 17, 2003, and assisted him in moving the animals as an unpaid helper who followed his son’s instructions. (Transcript 2 at 456-463; 496-500; 572-573).

December 17, 2003 was the first time Charles Knapp saw tigers being darted and tranquilized with drugs. (Transcript 2 at 483).

30. Prior to picking up the two lions on December 11, 2003, Bodie Knapp arranged for their sale for \$1,500.00 to Marshall Fabacher, a licensed animal dealer in Pipe Creek, Texas, who had found two other buyers for them. (Transcript 1 at 382-386; CX 11).

31. When Bodie Knapp picked up the two lions in the afternoon of December 11, 2003, from the Corpus Christi Zoo, he first darted them with Xylazine also known as Rompum, a drug that depresses respiration so as to immobilize the animals to facilitate their movement from the zoo premises to his truck for transport. Mr. Knapp delivered the two lions to Mr. Fabacher, Pipe Creek, Texas, on December 11, 2003, at about 10:00 PM. When the truck was opened, Mr. Fabacher saw two dead lions that were still soft indicating they had died fairly recently. He nonetheless paid Mr. Knapp the agreed price of \$1,500.00 because "it is standard that if you are purchasing an animal and it dies during transport that you still pay for it". Mr. Knapp gave Mr. Fabacher a Record of Acquisition Form for the two lions that Mr. Fabacher signed without reading. The form incorrectly showed the lions having been delivered in good condition and as a donation when in fact they were dead when delivered and Mr. Fabacher had paid for them as shown by his December 11, 2003 check to Bodie Knapp for \$1,500.00. Mr. Fabacher "caped out" the lions and sold them for rugs at a price that recouped the \$1,500.00 he had paid Mr. Knapp. (Transcript 1 at 382-385; 388-389; CX 11; CX 51; CX 53). In making this finding I have decided that Mr. Fabacher's testimony is more credible than that given by Bodie Knapp who testified that both lions were alive when he delivered them. I have

however, accepted Mr. Knapp's testimony that he darted the lions with Xylazine, and not Succostrin which Mr. Fabacher thought Mr. Knapp may have said he used. (Transcript 2, at 602-611).

32. On December 17, 2003, when Bodie Knapp picked up two tigers, together with two sheep, a pony and a fox, he again used Xylazine (Rompum) to facilitate the movement of the tigers from the zoo premises to his truck. He did not retain the services of a veterinarian to sedate the animals for him, nor did he seek the assistance, advice or supervision of a veterinarian. His veterinarian, Gary Lee Williams, had provided him with Xylazine to dart animals for immobilization and transport. (Transcript 1 at 421). Dr. Williams also supplied Bodie Knapp with Ketamine, a drug that is often used in combination with Xylazine for better results, but he did not use Ketamine when he darted the lions on December 11, 2003, or the tigers on December 17, 2003. (Transcript 1 at 421-422; 137-138; Transcript 2 at 575, 602).

33. When he darted the tigers on December 17, 2003, Bodie Knapp used a dart gun that has the capacity to carry a 4cc dart. He darted the male tiger that he estimated to weigh 750-800 pounds, with two darts. The first dart contained 4 ccs of Xylazine. He left it in the tiger while he then mixed up a dart with 3 ccs of Xylazine that he fired as soon as mixed. (Transcript 2 at 576-578). Cheryl Watkins, a volunteer at the zoo, observed that after the second darting, Bodie Knapp waited ten or fifteen minutes and then went up to the tiger and injected the tiger with a syringe. After this third injection, the tiger started having convulsions and foamed at the mouth. (Transcript 1 at 274-275). After loading this tiger on his truck, Bodie Knapp then darted the female tiger that he estimated to weigh 425-450 pounds. This tiger was even more hyperactive and

aggressive than the other. "She was really wound up". Bodie Knapp darted her with 10 ccs. of Xylazine and then injected her three times more with 3ccs of the drug being injected each time for a total dosage of 19 ccs, or 1900 milligrams, of Xylazine administered to the female tiger before she was loaded onto the truck. (CX 11).

34. The doses of Xylazine administered to each of the tigers were excessive in the opinion of Dr. Randall Sullivan, a highly qualified veterinarian who for the past 15 years has treated large felids (lions and tigers) on behalf of several establishments, and has developed expertise from darting over 200 felids. His testimony was impressive, credible and persuasive. Working with Texas A&M University, he has developed a procedure for sedating felids by using a combination of Xylazine and Ketamine. Once an animal is sedated enough to approach, he accesses the depth of the anesthesia and if the animal appears to be in duress, he reverses the effects of the drugs administered by injecting another drug, either Tolazine or Yohimbine, to block the neuro receptors which the Xylazine is attacking and render the Xylazine ineffective. He also testified that one must wait a sufficient time between administering doses or "it can go too deep on you". Dr. Gary Williams, the veterinarian from whom Bodie Knapp obtained his drugs, likewise testified that he would not recommend using straight Xylazine on a large carnivore, and he only uses it in combination with Ketamine. Bodie Knapp used Xylazine exclusively, and did not follow the procedures that Dr. Sullivan would have used to safely sedate the tigers. (Transcript 1 at 42-45; 140-142; 154-155; 424; CX 11; Transcript 2 at 574-578).

35. The tigers died. Initially, Bodie Knapp told his veterinarian, Gary Williams, that the tigers had been killed in a fight with other tigers at his facility who had

gotten through a hole in a partition separating them. Mr. Williams then wrote a letter to that effect at Bodie Knapp's request to explain their deaths. (CX 17; CX 18; Transcript 1 at 406 -415) Bodie Knapp repeated this false story to Fred David Rich, who took the dead tigers and skinned them to be made into exhibits for a museum he operates. (CX 10). On December 18, 2003, when Charles Currer, Sonny Kelm, and a supervisor of the Nueces County Animal Control Department, Ramon Herrera, came to Bodie Knapp's facility, he repeated the story stating he had repaired the hole in the partition, but the investigators found no evidence of such a fight or a recently repaired hole. (CX 1; CX 42; Transcript 1 at 530-531). Bodie Knapp called Dr. Williams and told them that he lied about the way the tigers died. This time he said he used drugs to euthanize them because he couldn't find anyone who would take them, and he didn't want to lose his deal that included taking the tigers. (Transcript 1 at 418-420). At the hearing, Bodie Knapp testified that his statement to Dr. Williams was also made up because he felt Dr. Williams would better understand his euthanizing the animals than being negligent in some way. (Transcript 2 at 566-567). He next stated that he found the tigers dead when he entered his trailer upon arrival at his facility and that the female tiger had injuries that were not present when he loaded them. (CX 12) At the hearing, Bodie Knapp denied that he intentionally killed the tigers and testified that when he opened the trailer, the tigers were dead with wounds showing they had gotten into a fight. (Transcript 2 at 560-564).

36. Bodie Knapp, operating as a sole proprietorship, did business as Wayne's World, a safari park that primarily exhibited animals to school children and their families. In addition to Bodie Knapp and his wife, Jennifer Knapp, the park had anywhere from three to five employees that fluctuated season to season. As of April, 2005, Wayne's

World had been in business for four years. Bodie Knapp also earned income from buying and selling animals and transporting animals for other individuals. Bodie Knapp has a bachelor degree in animal science with a minor in business. Jennifer Knapp has a degree in elementary education. After the Knapps closed the doors to Wayne's World in anticipation of their loss of their AWA exhibitor's license, they lost their main source of income; have experienced severe financial hardship; have had to give up their house and her car; have filed Chapter Seven bankruptcy; and now live in a small trailer with their six children. (Transcript 2 at 510-512; 517; 541- 546).

Conclusions

1. On December 17, 2003, Robert Brock and Michelle Brock, both as agent for the Corpus Christi Zoological Association and on their own behalf, without a requisite license under the AWA, acted as a dealer, as defined in 7 U.S.C. § 2132 and 9 C.F.R. § 1.1, in that they, in commerce, for compensation or profit, delivered for transportation or negotiated the sale of a fox, two sheep and two tigers for exhibition in violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1. For this violation:

(a) The Corpus Christi Zoological Association and Robert and Michelle Brock should be ordered to cease and desist from violating the Act and the Regulations as authorized under 7 U.S.C. § 2149 (b).

(b) Robert and Michelle Brock should be jointly assessed a civil penalty of \$2,750 as authorized under 7 U.S.C. § 2149 (b), and as amended by 28 U.S.C. § 2461 and implemented by 7 C.F.R. § 3.91(a), (b)(2)(v).

(c) Robert and Michelle Brock should be denied licenses under the AWA for a period of ten years as authorized under 9 C.F.R. § 2.1 (e).

Robert and Michelle Brock thwarted effective administration of the AWA by APHIS by placing the animals owned by the Corpus Christi Zoological Association with Bodie Knapp without obtaining APHIS approval as the consent decision and order required. They did so largely because they had negotiated favorable terms with him that

would lessen the adverse economic impact of the consent decision and order on themselves and Michelle's father. APHIS first learned on December 13, 2003, just two days before the zoo's license revocation was to take effect, that animals had been placed with unapproved persons. In an e-mail sent by its attorney on December 15, 2003, APHIS expressed dismay that the zoo was not adhering to the terms of the consent decision and order and asked for the complete identities of the persons with whom the zoo's animals had been placed. Despite this warning by APHIS that the zoo was not in compliance with the terms of the consent decision, two days later, on December 17, 2003, the placement of animals with Bodie Knapp was completed at a time when neither the zoo nor the Brocks had a valid license as required by the AWA. The Brocks had arranged the deal with Bodie Knapp. (Findings 16, 18, and 20). It was to their benefit, and during the months of October, November and December, 2003, the Brocks were in obvious control of the meetings that approved the deal. Whether they had official status as members of the Board of Directors is uncertain, but they were the ones who negotiated the deal with Mr. Knapp and at least one of the Brocks participated at each of the Zoo Meetings where the deal and its terms were approved. The only others in attendance and voting at these meetings were the zoo's onsite caretakers and occasionally a volunteer. As a result of the deal, the two caretakers were made to vacate the premises. The Brocks on the other hand obtained a commitment that Michelle would keep a carousel, would be allowed to continue to house animals she personally owned at the zoo, and that a loan her father had made to the zoo would be repaid. The Brocks also benefited from a Zoo Meeting on November 20, 2003, in which two mobile homes were signed over to them for back wages owed Michelle (Finding 19). The fact that the two caretakers voted for these

results raises a strong inference that they recognized themselves to be subordinates of the Brocks. At any rate, when the remaining zoo animals were transferred to Bodie Knapp, on December 17, 2003, it was the culmination of the deal the Brocks had made with him; a deal the Brocks took no steps to stop after being warned that their arrangements for animal transfers were not in compliance with the consent decision. They allowed the final transfer of animals to Bodie Knapp to go forward after the revocation of the zoo's AWA license. They thereby, together with the zoo, became subject to sanction for acting as a dealer while unlicensed.

APHIS has chosen not to request the imposition of a civil penalty against the now defunct Corpus Christi Zoological Association for its violation of the Act and the regulations, ostensibly because such a monetary penalty would be meaningless. Instead, APHIS has requested that the Corpus Christi Zoological Association and the Brocks be made subject to a cease and desist order, that civil penalties be assessed against the Brocks as the alter egos or agents of the Association, and that the Brocks be disqualified for ten years from becoming licensed under the AWA.

I agree with APHIS that the zoo and the Brocks should be made subject to a cease and desist order, and that the Brocks should be assessed civil penalties and disqualified from future licensing. However, I am basing this result wholly on the fact that, on December 17, 2003, the Brocks acted as a dealer while unlicensed and did so not merely as the zoo's agent, but as a way to lessen adverse personal consequences to themselves due to the zoo's closing and to secure payment of a loan the zoo still owed to Michelle's father. The record evidence and applicable legal precedent do not support the imposition

of sanctions against the Brocks on the basis of the various other grounds advanced by complainant.

The record evidence does not support Complainant's assertion that the Association and the Brocks violated the regulations that require the making and keeping of records concerning the disposition of animals. Respondents have provided exhibits showing such records were in fact made (RX 157 and RX 158). The person responsible for their preparation was Kathy Hostetler who has sworn she had supplied them in the past (RX 147), and had prepared transfer documents on December 17, 2003 that Bodie Knapp refused to sign (RX 141). The APHIS investigator who testified at the hearing could not recall citing the records kept by Ms. Hostetler, during 2003, as deficient. Moreover, when he went to the zoo facility on December 17, 2003, there were some records and he did not again have any dealings with the Corpus Christi Zoo to attempt to acquire or see records of the disposition of the animals. (Transcript 1 at 670; 504; 506-507). Complainant's proposed conclusions of law respecting deficient animal disposition records therefore lack evidentiary support and are rejected.

Complainant also asserts that the Association and the Brocks violated regulations governing the provision of veterinary care to animals, their transportation in proper enclosures, and their careful handling so as not to cause them behavioral stress, physical harm or unnecessary discomfort. Under the arrangements for and the circumstances of the transfer of the zoo's animals to Bodie Knapp, he had assumed each of these responsibilities. He was the one who darted the lions and tigers. He personally removed them from the zoo's premises in his enclosures and placed them in his truck for

transportation. Therefore, to the extent proven, these proposed conclusions have application to Bodie Knapp and not to the Association or the Brocks.

Complainant has argued that both the Corpus Christi Zoological Association and a predecessor corporation, The Corpus Christi Zoo, Inc, were alter egos of Robert and Michelle Brock. The record evidence, however, fails to adequately substantiate these alter ego arguments. The minutes of the Corpus Christi Zoological Association show that although the Brocks formed this non-profit corporation, and were listed as directors on its Articles of Incorporation, they were replaced at the very first organizational meeting by a very active Board of Directors who conducted frequent meetings that, prior to the end of 2003, were well attended with extensive discussions and decision-making respecting the zoo's promotion, funding and operation. Officers other than the Brocks were elected that included a treasurer who kept and spent the Association's funds in an account separate and apart from any belonging to or controlled by the Brocks. The predecessor for-profit corporation, The Corpus Christi Zoo, Inc., was not operated by the Brocks after the not-for-profit Association purchased its assets and liabilities and assumed its name as is shown in the minutes of the Association's August 27, 1996 organizational meeting.

In re Marysville Enterprises, Inc., 59 Agric. Dec. 299, 315 (2000), upon which complainant relies, lists six factors to be examined before the corporate form may be ignored. When those six factors are examined in the light of the present facts, there is an insufficient showing that the Brocks were the alter egos of the Association.

1. Though the Corpus Christi Association was initially formed at the direction of the Brocks, they turned over its control at the initial organizational meeting to a Board of directors that did not include them.

2. The Brocks appear to have been under the direction and control of the Association's officers and Board of Directors until late 2003, and therefore the Brocks could not be said to have controlled the corporation until late 2003.

3. The corporate funds were not commingled with individual funds belonging to the Brocks.

4. Persons other than the Brocks functioned as the Association's directors and officers.

5. Corporate formalities, such as keeping minutes and corporate records appear to have been observed.

6. Evidence that the corporate entity was a façade for operations of the Brocks is limited to the time just before and after the issuance of the consent decision and order in late 2003.

Under these circumstances, the corporate form of the licensee cannot be disregarded. APHIS respected it at the time it entered into the consent decision and order with the Association. The Brocks were not asked to either sign or be included as parties subject to the order's terms.

However, 7 U.S.C. § 2139 provides that when construing violations of the AWA, acts of an agent shall be deemed acts of the licensee "as well as such person". In other words, an agent's act will be construed to be a violation of the AWA and the regulations by the licensee for whom the agent acts, and may also be a personal violation by the agent that can subject him to the imposition of civil penalties under the AWA. On December 17, 2003, it was a violation of the AWA and the regulations for both the

Association and the Brocks to engage in conduct encompassed by the dealer definition when neither had a valid license.

Therefore, I conclude that both the Association and Robert and Michelle Brock violated the Act and the regulations on that date when the Brocks, as the Association's agent and on their own behalf, acted in the capacity of a dealer while unlicensed. Under these circumstances both the Association and the Brocks should be made subject to a cease and desist order; and the Brocks should be assessed appropriate civil penalties, and disqualified for ten years from obtaining a license under the AWA. The maximum penalty for a single violation is \$2,750 under 7 U.S.C. § 2149 (b), as amended by 28 U.S.C. § 2461 and implemented by 7 C.F.R. § 3.91(a),(b)(2)(v). The entry of an order to cease and desist from continuing the violation is also authorized. Both sanctions are appropriate under the circumstances of this violation by the Brocks. Moreover, a violation of the AWA, or the regulations constitutes grounds for denial of a license, and the recommendation by APHIS that both Brocks should be denied a license for ten years is also concluded to be appropriate.

In assessing the penalty, I have given due consideration to the fact that a small business was involved and there is no prior history of violations by the Brocks. On the other hand, I have also considered the fact that they have shown a lack of good faith, and that the circumstances of their conduct make the violation grave in nature. Though the failure of the Brocks to comply with the provisions of the consent decision and order that did not name them as parties and was unsigned by them, is not itself a ground for holding them to have violated the AWA, nonetheless it shows their lack of good faith and the willful nature of their violation of the AWA when they transferred animals while

unlicensed. Their lack of good faith is also shown by their testimony at the hearing. Robert Brock attempted to bolster his testimony that he sought to place the animals with the persons approved by APHIS by introducing a list with notations he testified he made in December 2003. On cross examination he came to admit that the list was a photo copy of a portion of the complaint that he first received after its filing in March 2004. When Michelle Brock testified, she accused an APHIS investigator of seeking bribes and being the subject of an investigation concerning his conduct. Cross examination showed her accusations to be without factual basis.

The Brocks deliberately confounded the objectives of the governing consent decree and order to lessen its adverse economic consequences for themselves and a family member. They also did not respect the oath they gave to give only truthful testimony at the hearing. It is necessary to impose the maximum civil penalty of \$2,750.00 for their joint violation of the AWA, together with the other sanctions, to adequately deter them and others from engaging in similar conduct in the future so that the ability of APHIS to achieve the objectives of the Animal Welfare Act is maintained.

2. When Bodie Knapp handled and immobilized two lions on December 11, 2003 and two tigers on December 17, 2003, he violated the regulations and thereby the Animal Welfare Act, in that he failed to obtain adequate veterinary guidance on the handling, immobilization, anesthesia, tranquilization and euthanasia of the animals in violation of 9 C.F.R. § 2.40(b)(4); and he failed to handle the animals as carefully and expeditiously as possible so as to not cause them behavioral stress, physical harm or unnecessary discomfort in violation of 9 C.F.R. § 2.131(b)(1). Furthermore, he failed to make, keep, and maintain records or forms that fully and correctly disclosed required information concerning his purchase and disposition of the animals in violation of 9 C.F.R. § 2.75(b)(1). For these violations:

(a) Bodie Knapp should be ordered to cease and desist from violating the Act and the regulations pursuant to 7 U.S.C. § 2149 (b).

(b) Bodie Knapp should be assessed a civil penalty of \$5,000.00 pursuant to 7 U.S.C. § 2149 (b), as amended by 28 U.S.C. § 2461 and implemented by 7 C.F.R. 3.91(a), (b)(2)(v).

When Bodie Knapp picked up animals from the Corpus Christi Zoological Association on December 11 and 17, 2003, he handled them in the most expeditious and convenient way for their transportation without paying sufficient regard to the needs and safety of the animals.

Bodie Knapp did not first consult a veterinarian with expertise in the use of immobilizing drugs on lions and tigers. The veterinarian that he employed admitted that he had less experience than Bodie in the darting of big cats with drugs. But this veterinarian did testify that he would not have used Xylazine alone to dart a lion or tiger. Instead he would have used it in combination with Ketamine. Dr. Randall Sullivan who does possess expertise in the use of these drugs on big cats (felids), explained why the two drugs should be used in combination. (Transcript 1 at 137-138). Xylazine slows an animal's heart rate whereas Ketamine does not. Used together in combination, the desired effect is still achieved, and the lower amount of Xylazine that is used lessens the potential of causing the animal's death. In his opinion, which I accept as credible and persuasive proof, the doses of Xylazine administered by Bodie Knapp to each of the tigers on December 17, 2003, were excessive. Bodie Knapp did not wait a sufficient time between his injections of additional amounts of Xylazine to the tigers to properly observe their reactions to it in order to assure that the animals did not go too deep. He also did not possess and did not administer drugs such as Tolazine or Yohimbine, that are used to reverse the effects of excessive doses of Xylazine. (*see finding 35, supra*)

The week before he darted the tigers with excessive doses of Xylazine, Bodie Knapp had darted two lions that also then died. Bodie Knapp denies that he caused their deaths, but his testimony is not credible. He has given three different versions of why and how they died. In his last version, he testified that he used Xylazine alone to tranquilize them and that he used a small dose on each. But he has also insisted that he used proper dosages on the tigers. I am persuaded that he probably overdosed them as well, and did not observe the procedures he would have been advised to observe if he had consulted a veterinarian with expertise on the use of drugs to immobilize big cats.

On both December 11 and December 17, 2003, Bodie Knapp did not handle the animals as carefully as possible to save them from behavioral stress, physical harm and unnecessary discomfort as required by the regulations. The fact that he overdosed the tigers on December 17, 2003, is made even more egregious by the fact that he had killed two lions just the week before by overdoses. He committed further violations of the regulations by making false reports of the condition and disposition of the animals to conceal their deaths. In light of these circumstances, the imposition of a civil penalty in addition to the issuance of a cease and desist order is fully warranted.

I have not concluded, however, as complainant asserts, that he violated section 2.4 of the regulations (9 C.F.R. § 2.4) by interference with an APHIS official in the course of carrying out his or her duties. This regulation has application when a licensee threatens, harasses or abuses an official. There is no evidence of such conduct by Bodie Knapp. The complainant also has charged Bodie Knapp with violating section 2.100 of the regulations (9 C.F.R. § 2.100) by failing to comply with the transportation standards pertaining to space and structural requirements for primary enclosures used to transport

animals, and failing to observe the animals while they were being transported as set forth at sections 3.137 and 3.140 (C.F.R. § 3.137 and §3.140). These alleged violations are subsumed within his violation of 9 C.F.R. § 2.131(b)(1) that required his careful and expeditious handling of the animals so as not to cause them stress, harm or unnecessary discomfort. Moreover, the available proof that he violated the transportation standards is largely speculative and inferential. Accordingly, I have not concluded that he committed those violations.

The gravity and willful nature of the violations that I have concluded Bodie Knapp committed, together with his demonstrated lack of good faith, make the assessment of a civil penalty necessary. Under the Act, I am not required to consider the respondent's ability to pay a civil penalty when determining the appropriate amount to assess. But it would be unconscionable to ignore his loss of his business, his need to file a Chapter Seven bankruptcy, and the loss of his house that has resulted in his wife and six children now living in a small trailer. I have concluded that \$5,000.00, under all of these circumstances, is the appropriate amount that should be assessed to act as a deterrent to future violations of this type by him and others

3. Charles Knapp is not subject to sanction under the AWA.

As set forth in finding 29, *supra*, Charles Knapp, was an unpaid helper who followed his son's instructions when he assisted him in moving animals on December 11 and 17, 2003. Though an agent of a principal may also be held liable for acts performed on behalf of a principal under 7 U.S.C. § 2139, this provision does not, in and of itself, subject one to sanctions under the AWA. Only persons requiring licenses are subject to the Act's sanctions.

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty...and...may (be made subject to an order)...that such person shall cease and desist from continuing such violation....

7 U.S.C. § 2149

Charles Knapp never acted as either an exhibitor or a dealer who required a license. None of Charles Knapp's actions on December 11 and 17, 2003, were for his personal benefit. He was helping his son and followed his directions as to the handling and transportation of the animals. He acted in reliance on Bodie Knapp's knowledge and assumed Bodie's compliance with the Act, the regulations and the standards. Charles Knapp had no reason to believe that Bodie was not complying with them, and it cannot be said that Charles Knapp acted in knowing or careless disregard of them. Accordingly, it cannot be said that he failed to comply with the Act, the regulations or the standards, and he may not, for that reason, be denied a license in the future under 9 C.F.R. § 2.1 (e).

Therefore, the complaint's charges against him should be dismissed, and Complainant's request that Charles Knapp be disqualified for a period of one year from becoming licensed under the Act should be denied.

ORDER

It is hereby **ORDERED**:

1. Coastal Bend Zoological Association (formerly known as Corpus Christi Zoological Association, doing business as Corpus Christi Zoo), Robert Brock, Michelle Brock, and Bodie Knapp shall cease and desist from violating the Animal Welfare Act and the regulations and standards issued pursuant to the Animal Welfare Act.

2. Robert Brock and Michelle Brock are jointly assessed a civil penalty of \$2,750.00. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent as instructed by Colleen A. Carroll, attorney for APHIS.

3. Robert Brock and Michelle Brock are disqualified from receiving licenses under the Animal Welfare Act for a period of ten years from the effective date of this order.

4. Bodie Knapp is assessed a civil penalty of \$5,000.00. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent as instructed by Colleen A. Carroll, attorney for APHIS.

5. All charges alleged in the complaint against Charles Knapp are hereby dismissed.

This decision and order shall become effective without further proceedings, 35 days after the date of service, unless there is an appeal to the Judicial Officer by a party to the proceeding within 30 days after receiving this decision and order.

Dated: August 31, 2006


Victor W. Palmer
Administrative Law Judge